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IN THE SUPREME COURT OF THE STATE OF IDAHO

COPY

STATE OF IDAHO,

Plaintiff-Respondent,

vs.

RICHARD T. YEOMAN,

Defendant-Appellant.

NO. 35689

BRIEF OF RESPONDENT

**APPEAL FROM THE DISTRICT COURT OF THE FIRST JUDICIAL
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE
COUNTY OF KOOTENAI**

**HONORABLE LANSING L. HAYNES
District Judge**

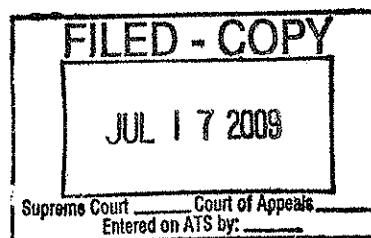
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ARGUMENT

I.

Yeoman Has Failed To Establish That The District Court Erred In Denying His Motion To Dismiss Because The Plain Language Of Idaho Code § 18-8304 Requires Yeoman To Register As A Sex Offender

A. Introduction

Yeoman was convicted of failing to register as a sex offender under I.C. § 18-8307, which applies to those persons identified in I.C. § 18-8304. He appeals the denial of his motion to dismiss and alleges that I.C. § 18-8304 should be interpreted so that he had no duty to register. Under the plain language of the statute Yeoman was required to register as a sex offender.

B. Standard Of Review

Questions of statutory interpretation are given free review. State v. Gibson, 126 Idaho 256, 256-57, 881 P.2d 551, 551-52 (Ct. App. 1994).

C. Yeoman Was Required to Register As A Sex Offender According To The Plain Language of I.C. § 18-8304

The interpretation of a statute must begin with the literal words of a statute. State v. Schwartz, 139 Idaho 360, 362, 79 P.3d 719, 721 (2003). Those words must be given their plain, usual, and ordinary meaning and the statute must be construed as a whole. Id. Where the language of a statute is plain and unambiguous, the court must give effect to the statute as written, without engaging in statutory construction. State v. Rhode, 133 Idaho 459, 462, 988 P.2d 685, 688 (1999); State v. McCoy, 128 Idaho 362, 365, 913 P.2d 578, 581

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STATEMENT OF THE CASE

Nature of the Case

Richard Yeoman is appealing from his judgment of conviction for failing to register as a sex offender. Yeoman alleges that the district court erred in denying his motion to dismiss the charge.

Statement of Facts and Course of Proceedings

In 1984, Yeoman was convicted of Rape in the State of Washington. (R., p. 25; PSI, p. 3.) Yeoman moved to Idaho in 2007. (R. p. 26.) Yeoman was not on probation or parole, but was required to register as a sex offender in Washington as of the date he moved to Idaho. (R., pp. 12, 26-27; Appellant's brief, p. 2.) Idaho charged Yeoman by information with failure to register as a sex offender and a persistent violator enhancement. (R., pp. 24-25, 61-62.) Yeoman filed a motion to dismiss alleging that the terms of the sex offender registry statute did not apply to him. (R., pp. 26-33.) After a hearing, the district court denied the motion. (R., p. 47.) Yeoman entered a conditional plea of guilty, reserving the right to appeal the denial of his motion to dismiss and pursuant to a plea agreement, the persistent violator enhancement was dismissed. (R., pp. 64-65, 77-78.) Yeoman was sentenced to five years, with three fixed. (R., pp. 87-89.) Yeoman filed a timely notice of appeal. (R., pp. 90-92.)

ISSUES

Mr. Yeoman states the issue on appeal as:

1. Did the district court err in denying Mr. Yeoman's Motion to Dismiss Information?

(Appellant's brief, p. 4.)

The state rephrases the issues on appeal as:

1. Has Yeoman failed to show he was entitled to dismissal where the plain language of Idaho Code § 18-8304 requires Yeoman to register as a sex offender?
2. Has Yeoman failed to demonstrate that Idaho Code § 18-8304 is unconstitutional?

(1996). The court assumes that the legislature meant what is clearly stated in the statute, unless the result is "palpably absurd." Schwartz, 139 Idaho at 362, 79 P.3d at 721; Rhode, 133 Idaho at 462, 988 P.2d at 688.

Thus, this Court must first determine if the statute is plain and unambiguous. If not, the Court must then resort to legislative history and rules of statutory interpretation to determine legislative intent. Finally, only if the statute still remains ambiguous will the Court apply the rule of lenity and resolve the remaining ambiguity in favor of the defendant. State v. Beard, 135 Idaho 641, 646, 22 P.3d 116, 121 (Ct. App. 2001). The statute in this case is clear. Idaho Code § 18-8304(1) reads in relevant part:

(1) The provisions of this chapter shall apply to any person who:

(a) On or after July 1, 1993, is convicted of the crime, or an attempt, a solicitation, or a conspiracy to commit a crime provided for in section 18-909 (assault with attempt to commit rape, infamous crime against nature, or lewd and lascivious conduct with a minor, but excluding mayhem, murder or robbery), 18-911 (battery with attempt to commit rape, infamous crime against nature, or lewd and lascivious conduct with a minor, but excluding mayhem, murder or robbery), 18-1506 (sexual abuse of a child under sixteen years of age), 18-1506A (ritualized abuse of a child), 18-1507 (sexual exploitation of a child), 18-1507A (possession of sexually exploitative material for other than a commercial purpose), 18-1508 (lewd conduct with a minor child), 18-1508A (sexual battery of a minor child sixteen or seventeen years of age), 18-1509A (enticing a child over the internet), 18-4003(d) (murder committed in perpetration of rape), 18-4116 (indecent exposure, but excluding a misdemeanor conviction), 18-4502 (first degree kidnapping committed for the purpose of rape, committing the infamous crime against nature or for committing any lewd and lascivious act upon any child under the age of sixteen, or for purposes of sexual gratification or arousal), 18-4503 (second degree kidnapping where the victim is an unrelated minor child), 18-6101 (rape, but excluding 18-6101 1. where the defendant is eighteen years of age or younger or where the defendant is exempted under subsection (4) of this section), 18-6108 (male

rape), 18- 6110 (sexual contact with a prisoner), 18-6602 (incest), 18-6605 (crime against nature), 18-6608 (forcible sexual penetration by use of a foreign object), or upon a second or subsequent conviction under 18-6609, Idaho Code (video voyeurism).

(b) On or after July 1, 1993, has been convicted of any crime, an attempt, a solicitation or a conspiracy to commit a crime in another state, territory, commonwealth, or other jurisdiction of the United States, including tribal courts and military courts, that is substantially equivalent to the offenses listed in subsection (1)(a) of this section and enters the state to establish permanent or temporary residence.

(c) Has been convicted of any crime, an attempt, a solicitation or a conspiracy to commit a crime in another state, territory, commonwealth, or other jurisdiction of the United States, including tribal courts and military courts, that is substantially equivalent to the offenses listed in subsection (1)(a) of this section and was required to register as a sex offender in any other state or jurisdiction when he established permanent or temporary residency in Idaho.

...

I.C. § 18-8304(1).

Yeoman claims that the statute should be interpreted in a way inconsistent with his guilt. Specifically, he argues that he had no duty to register under subsection (1)(c) because the underlying sex offense for which he was convicted in another state occurred before July 1, 1993 and that "an offense which is substantially equivalent 'to the offenses listed in subsection (1)(a)' can only be an offense committed on or before [sic] [after] July 1, 1993." (Appellant's brief, pp. 7-8.) Yeoman's proposed interpretation is contrary to the plain language of the statute.

Here the plain language of the statute incorporates the "offenses listed in subsection (1)(a)." The offenses listed have no date restriction. See, e.g., State v. Coleman, 128 Idaho 466, 471, 915 P.2d 28, 33 (Ct. App. 1996) (time not a

material element of lewd conduct). If the legislature intended to include the date restriction of subsection (1)(a) it would have said so; by limiting the incorporation of that subsection to the “offenses listed” the plain language does not incorporate any date limitation. Here the plain language of subsection (1)(c) requires a sex offender convicted in a foreign jurisdiction to register in Idaho if they were required to register in the foreign jurisdiction when they moved to Idaho.

Even if the language were not plain, Yeoman’s proposed interpretation leaves the statute internally inconsistent and renders language of the statute a nullity. See Belt v. Belt, 106 Idaho 426, 431, 679 P.2d 1144, 1149 (1984) (construction of a statute should be adopted which does not deprive provisions of the statute of their meaning). Inexplicably, Yeoman fails to even mention subsection (1)(b) and says that subsection (1)(c) is the “only section that involved foreign convictions.” (Appellant’s brief, p. 8.) Clearly, both subsections (b) and (c) involve foreign convictions. Yeoman’s error on this point contributes to his faulty logic and results in a conclusion directly contrary to the rules of statutory interpretation. Idaho Code § 18-8304 has two subsections that apply to persons with convictions in other jurisdictions. Both have the same “substantially equivalent” language incorporating the offenses of subsection 1(a). I.C. § 18-8304(1)(b) and (1)(c). Subsection (1)(b), however, specifically includes the “on or after July 1, 1993” language, while subsection (1)(c) does not. Interpreting subsection (1)(c) to include the date restriction, as Yeoman would have this court do, makes the date restriction in subsection (1)(b) superfluous and

redundant. This interpretation is thus contrary to the rules of statutory interpretation.

The plain language of the statute requires Yeoman to register. Therefore, Yeoman has failed to demonstrate that the district court erred in denying his motion to dismiss.

II.

Yeoman Has Failed To Establish That Idaho Code § 18-8304 Is Unconstitutional

A. Introduction

Yeoman was convicted of failing to register as a sex offender under I.C. § 18-8307, which applies to those persons identified in I.C. § 18-8304. He appeals the denial of his motion to dismiss and alleges that I.C. § 18-8304 violates both the Privileges and Immunities Clause (right to travel) and the Equal Protection Clause of the U.S. Constitution. Yeoman has failed to demonstrate any constitutional violation.

B. Standard Of Review

Where the constitutionality of a statute is challenged, the appellate court reviews it de novo. State v. Suiter, 138 Idaho 13, 15, 56 P.3d 775, 777 (2002); State v. Cobb, 132 Idaho 195, 197, 969 P.2d 244, 246 (1998). The party challenging the constitutionality of a statute must overcome a strong presumption of constitutionality and clearly show the invalidity of the statute. State v. Richards, 127 Idaho 31, 34, 896 P.2d 357, 360 (Ct. App. 1995).

"It is hornbook law that legislative enactments are presumed constitutional and that appellate courts are obligated to seek an interpretation of the statute which upholds its constitutionality." State v. Newman, 108 Idaho 5, 13 n.12, 696 P.2d 856, 864 n.12 (1985); State v. Dickerson, 142 Idaho 514, 518, 129 P.3d 1263, 1267 (Ct. App. 2006).

C. Yeoman Has Failed To Establish That Idaho Code § 18-8304 Unreasonably Burdens His Right To Travel In Violation Of The Privileges And Immunities Clause Of The U.S. Constitution

The right to travel from one state to another is a fundamental right derived from the Privileges and Immunities Clause of the 14th Amendment and one of its components is the right of those travelers who choose to become permanent residents to be treated like other citizens of the state. Saenz v. Roe, 526 U.S. 489, 501 (1999); Miller v. Reed, 176 F.3d 1202, 1205 (9th Cir.1999). "A statute that unreasonably burdens the right to travel is subject to strict scrutiny and will be struck down as unconstitutional 'unless shown to be necessary to promote a compelling governmental interest.' However, when the right to travel is implicated but not unreasonably burdened, the statute need only be rationally related to a legitimate governmental interest to pass constitutional muster." U.S. v. Burkey, 2009 WL 1616564, 28 (D.Nev., 2009) (citing Memorial Hosp. v. Maricopa County, 415 U.S. 250, 262 (1974); Walsh v. City and County of Honolulu, 423 F.Supp.2d 1094, 1102-1104 (D.Haw., 2006) (citing Martinez v. Bynum, 461 U.S. 84, 87 (1983)).)

Yeoman claims that there is "disparate treatment" between out-of-state and in-state sex offenders. (Appellant's brief, p. 13.) He relies on a case in

which it was held to be a violation of the Privileges and Immunities Clause of the Fourteenth Amendment to deny newly-arrived residents the same welfare benefits as established residents. (Appellant's brief, pp. 10-12 (citing Saenz v. Roe, 526 U.S. 489, 502 (1999)).) The court in Saenz held that it was unconstitutional to deprive a new resident of the same welfare benefits as an established resident based on a one year residency requirement unless such deprivation was based on a "compelling" governmental interest. Saenz, 526 U.S. at 502. Yeoman's case is distinguishable from Saenz because it does not involve a durational residency requirement and he has failed to demonstrate that he was deprived of any benefits of state citizenship by virtue of the sex offender registration requirement.

It is more instructive to look at an Idaho Court of Appeals case where the court found unconstitutional a provision of the (since amended) sex offender registration act that required sex offenders convicted in other jurisdictions to register if they entered the state after July 1, 1993. State v. Dickerson, 142 Idaho 514, 518-19, 129 P.3d 1263, 1267-68 (Ct. App. 2006). The court stated that the "right to travel" was burdened by statutes that either "penalize migration or create fixed, permanent distinctions among citizens" based upon time of entry into the state. Id., 142 Idaho at 519, 129 P.3d at 1268. The court's analysis of why the statute violated the "right to travel" was as follows:

In this case, I.C. § 18-8304 (1)(b) has elements of both types of classifications. It penalizes persons with pre-1993 convictions who moved to the state after 1993 by requiring registration when it is not required of like offenders who are longer-term residents, and it created fixed, permanent distinctions between sex offenders based solely upon the date when they established residency in Idaho.

Id. at 519-20, 129 P.3d at 1268-69. Thus, the fundamental problem with the statute was that it treated persons differently based upon when they came to the state.

Application of this standard shows that the statutory provision here at issue neither penalizes migration nor creates permanent distinctions among residents because it does not vary in its application by when the person in question enters the state. On the contrary, the statute draws distinctions based on *where the person was convicted*, not when he entered the state. The Sexual Offender Registration Act applies to “any person who”:

Has been convicted of any crime, an attempt, a solicitation or a conspiracy to commit a crime in another state, territory, commonwealth, or other jurisdiction of the United States, including tribal courts and military court, that is substantially equivalent to the offenses listed in subsection (1)(a) of this section and was required to register as a sex offender in any other state or jurisdiction when he established permanent or temporary residency in Idaho.

I.C. § 18-8304 (1)(c). Thus, a person has a duty to register in Idaho under this subsection if two criteria are met. First, the person had to be convicted of a qualifying offense in a jurisdiction other than Idaho, and the person had to have been required to register as a sex offender in another jurisdiction when he established residency in Idaho.

Yeoman argues that the provision of the sex offender registration act currently at issue burdens the right to travel because “the statute in question clearly treats an in-state sex offender differently than it would a similarly situated out-of-state sex offender.” (Appellant’s brief, p. 13.) He has failed to show, however, that the statute in fact does so. Unlike the statute struck down in

Dickerson, the current statute does not differentiate based upon date of entry into the state, but is instead based upon whether the conviction was in Idaho or out of Idaho. His argument relies in part on the faulty premise that Yeoman, a Washington resident who committed a crime in Washington, should be compared to an Idaho resident who committed a crime in Idaho. (Appellant's brief, pp. 12-13.) This is simply incorrect. The correct comparison is to compare Yeoman with an Idaho resident who committed a crime in Washington. See People v. McGarghan, 18 Misc.3d 811, 815, 852 N.Y.S.2d 615, 619 (N.Y. Supp. 2007).

The statute would apply the same to a life-long resident of Washington moving to Idaho after release from prison for a conviction of a sex offense in Washington, and to a life-long resident of Idaho establishing a permanent residence back in Idaho after release from prison for a conviction of a sex offense in Washington. Unlike in Dickerson, registration is not premised upon the date the defendant entered the state, but rather whether the defendant had to register in a foreign jurisdiction when he entered Idaho. The only time the statute would conceivably treat persons differently based upon residency appears to be if an Idaho citizen is not required to establish a "permanent or temporary residency in Idaho" following a conviction requiring registration in another state. The statute, however, defines "residence" as "the offender's present place of abode." I.C. § 18-8303(13). Thus, it appears from the statute that the only time an Idaho citizen convicted in another jurisdiction (and subject to registration there) would avoid the registration requirements under I.C. § 18-

8304(1)(c) would be when that person is not incarcerated for the sex offense and therefore did not change his place of abode. Yeoman has failed to show disparate treatment.

Furthermore, Yeoman has not shown that *his* travel rights were infringed. Yeoman was convicted of rape, spent some time in prison before being released on parole, and was required to register as a sex offender in Washington when he moved to Idaho. (PSI pp. 3, 7; R., pp. 12, 26-27; Appellant's brief, p. 2.) If Yeoman had been an Idaho resident his entire life except for the time he spent in a Washington prison he would still have been required to register upon entering Idaho under subsection (1)(c) by virtue of his Washington conviction and his obligation to register as a sex offender in that state. He has been treated, therefore, the same way as any other Idaho resident would have been under similar circumstances. A comparison could also be made between an Idaho resident who was required to register as a sex offender who moved within the state. As a court found under the federal sex offender registry, "the essential part of the charged crime in this matter is the failure to register; the Defendant's right to travel is incidental to this obligation, and not necessarily affected. Such registration requirements place no greater burden on an interstate traveler than upon a convicted sex offender who travels to a different city within his home state, in a state where such a move triggers a re-registration or updating requirement." U.S. v. Clayton, 2009 WL 1033664, 18-19 (W.D.Pa., 2009). Under either comparison, Yeoman has failed to demonstrate that the burden of registering (or re-registering) upon moving is unreasonable.

Yeoman has not carried his burden of showing unconstitutionality because he has failed to show that the constitutional right to travel prohibits the state of Idaho from differentiating between sex offenders (for purposes of registration) based upon jurisdiction of conviction. See People v. McGarghan, 18 Misc.3d 811, 852 N.Y.S.2d 615 (N.Y. Supp. 2007) (requiring registration on basis of out-of-state requirement of registration does not treat new state residents different from long-term state residents). Even more importantly, he has failed to show that the statute treated him any differently based upon when he came to Idaho. Because he has failed to show that the statute violated *his* right to travel, he has failed to show the district court erred in denying his motion to dismiss.

Even if there were disparate treatment, Yeoman has failed to show that the registration requirement is an unreasonable burden subject to strict scrutiny. The "constitutional right of interstate travel is certainly not an absolute right." U.S. v. Clayton, 2009 WL 1033664, 19 (W.D.Pa., 2009). In Clayton, the court found that the federal sex offender registration law did not violate the right to travel, explaining that:

It is true that upon traveling to a new state, Defendant must register in the new state, while a convicted sex offender who remains within in [sic] a state need only remain properly registered. However, the Court fails to see a constitutional violation in this distinction. Where a person moves to a new state, he needs to obtain a new driver's license and vehicle registration: frankly, this licensing process can be an irritating hassle; however, the motor vehicle and licensing requirements certainly do not unduly infringe upon anyone's right to travel. Furthermore, signing up for utilities in some parts of this country is an exercise in frustration. Essentially, seemingly innumerable administrative requirements place burdens upon those who move. Yet following Defendant's line of reasoning, this Court should strike down these pesky local administrative burdens, because they are an impediment to moving. . . the Court does not

mean to minimize the substantial stigma that accrues from compliance with registration requirements. Nonetheless, such laws were appropriately passed by the legislative branch, and cannot be invalidated absent a showing of a specific constitutional violation.

Id.

The Court in Clayton found that the burden imposed upon Defendant's right to travel was not unreasonable, but was necessary to achieve a compelling interest, stating that, "obviously, all sex offender registration requirements are burdensome, and the consequences of such lists interfere greatly with a registrant's freedom to work and to participate in society; however, society, through its legislative processes, has decided again and again that it has a compelling and strong interest in preventing future sex crimes." Clayton, 2009 WL 1033664, 18 -19 (W.D.Pa., 2009).

Similarly, the U.S. District Court in Nevada noted that "sex offenders traveling from state to state may still do so freely without first seeking permission from authorities" and held that the inconvenience of updating one's registration upon traveling interstate is justified in light of the purpose behind the registration requirements. U.S. v. Burkey, 2009 WL 1616564, 28 (D.Nev., 2009). "The state has a strong interest in preventing future sexual offenses and alerting local law enforcement and citizens to the whereabouts of those that could reoffend. Without such a requirement, sex offenders could legally subvert the purpose of the statute by temporarily traveling to other jurisdictions for long periods of time and committing sex offenses without having to notify law enforcement." U.S. v. Burkey, 2009 WL 1616564, 28 (D.Nev., 2009)(citing Doe v. Moore, 410 F.3d 1337, 1349 (11th. Cir. 2005).)

Even if the statute did burden his right to travel, and were subject to strict scrutiny, it does not violate the constitution if, pursuant to strict scrutiny,¹ the distinction drawn by the statute furthers a legitimate state purpose. Dickerson, 142 Idaho 514, 520, 129 P.3d 1263, 1269. Yeoman's total argument on this point is that, "The State has set forth no compelling governmental reason for the disparate treatment." (Appellant's brief, p. 13.) Pointing out that the state has not done something is not sufficient to carry Yeoman's burden of proof. The state requests that the Court reject Yeoman's challenge to the statute because he has not carried his burden. See I.A.R. 35; State v. Zichko, 129 Idaho 259, 263, 923 P.2d 966, 970 (1996) ("A party waives an issue cited on appeal if either authority or argument is lacking, not just if both are lacking.")

If the court reaches the question of a legitimate state purpose, review shows that the statute passes constitutional muster. The governmental interest in preventing sex abuse and in knowing the location of sex offenders is compelling. See Connecticut Dep't of Public Safety v. Doe, 538 U.S. 1, 4 (2003) (sex offenders are a serious threat and are "much more likely than any other type of offender to be re-arrested for a new rape or sexual assault"). The risk of recidivism is "frightening and high" and often occurs in a different state. Smith v. Doe, 538 U.S. 84, 103-04 (2003) (internal quotation omitted.) Allowing sex

¹ The Dickerson court noted that a lesser standard of review (such as rational basis) might apply if a statute was deemed to not infringe on migration but instead created permanent distinctions based upon time of entry into the state. Dickerson, 142 Idaho at 520, 129 P.3d at 1270. The state submits that the statute survives strict scrutiny, and therefore would also pass muster under a lesser standard. Nevertheless, this Court should apply the correct standards of review.

offenders to avoid registration by simply coming to Idaho would also subvert the purpose of sex offender registration laws in existence in other states. Thus, requiring those already subject to another state's registration requirements to register upon coming to Idaho constitutionally furthers a governmental interest. see Miller v. State, 971 So.2d 951, 954 (Fla. App. 2007) (upholding statute requiring persons required to register as sex offenders in another state to register in Florida if they establish or maintain a residence in Florida); People v. McGarghan, 18 Misc.3d 811, 814, 852 N.Y.S.2d 615, 619 (N.Y. Supp. 2007) ("States have a legitimate interest in requiring offenders who commit registerable offenses in other jurisdictions to register in their new state of residence. [Otherwise] an offender could avoid sex offender registration requirements simply by moving his state of residence, thereby frustrating the purpose behind sex offender registration laws.") Idaho has a compelling interest in preventing sex offenders from avoiding registration laws by moving to Idaho. Thus, the statute survives strict scrutiny.

Yeoman has failed to show that the requirement that he register in Idaho violated his right to travel as guaranteed by the Privileges and Immunities Clause of the Constitution and consequently, he has failed to show that the district court erred in denying his motion to dismiss.

D. Yeoman Has Failed To Establish That Idaho Code § 18-8304 Violates The Equal Protection Clause Of The U.S. Constitution

Yeoman also argues that requiring him to register violates the Equal Protection Clause of the U.S. Constitution under a *rational review* standard. (Appellant's brief, pp. 13-17.)

The Equal Protection Clause embraces the principle that all persons in like circumstances should receive the same benefits and burdens of law. Equal protection issues focus upon classifications within statutory schemes that allocate benefits or burdens differently among the categories of persons affected. State v. Reed, 107 Idaho 162, 167-168, 686 P.2d 842, 847-848 (Ct. App. 1984). A classification satisfies equal protection under the rational basis standard if it is rationally related to a legitimate government purpose and if any conceivable set of facts would support it. State v. Mowrey, 134 Idaho 751, 755, 9 P.3d 1217, 1221 (2000); State v. Bowman, 104 Idaho 39, 41, 655 P.2d 933, 935 (1982). Equal protection does not require that all persons be treated alike, but only that similarly situated persons be treated alike.

Yeoman argues that Doe v. McVey, 381 F.Supp.2d 443, 449 (E.D. Pa. 2005), *aff'd* Doe v. Pennsylvania Board of Probation and Parole, 513 F.3d 95, 107-11 (3d Cir. 2008), is "directly on point." (Appellant's brief, pp. 14-16.) Even a cursory glance at that case, however, shows that it has almost no relationship to this case. First, Doe did not even challenge his obligation to register in Pennsylvania based upon his New Jersey conviction. Doe, 513 F.3d at 107. He challenged only the community notification provisions that required flyers announcing his violent predator sex offender status be passed around in his

neighborhood. Id. The basis of his challenge was that persons on parole in Pennsylvania who were convicted within the state were subject to community notification only if they were adjudicated to be a “sexually violent predator” in a civil hearing while persons on parole in Pennsylvania who were convicted outside of the state were automatically subject to community notification requirements. Id. at 98.² The court determined that protection from sex offenders was a legitimate governmental interest, and phrased the question presented as “whether the Commonwealth’s denial of equivalent process to both in-state and out-of state parolees is rationally related to its security concerns.” Id. at 108. The court ultimately held that there was no rational basis for treating parolees convicted in-state so differently than those convicted out-of-state. Id. at 107-11.

This case is significantly different. Unlike Doe, Yeoman is challenging his duty to register – not a classification as being a “sexually violent predator” subject to community notification. Likewise, Idaho sex offenders are not provided extra process not provided to out-of-state sex offenders in Idaho, as was the case in Doe. Thus, the analysis of whether these vastly different statutory provisions are rationally related to a legitimate state interest is of minimal utility in this case.

In this case, the state has not only the legitimate interest of protecting the community from sex offenders, but the legitimate interest in preventing sex offenders subject to registration elsewhere avoiding those registration requirements by coming to Idaho, and the legitimate interest in preventing this

² The statute governing Idaho’s procedure for declaring someone a violent sexual predator is found at I.C. § 18-8314. Nothing in the record indicates that such a designation was at issue in this case.

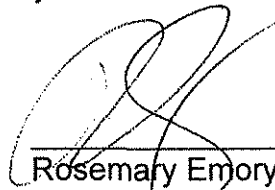
interest in preventing this subversion of those states' registration requirements. Protection of these interests is rationally related to requiring those already mandated to register in another state to also register when they come to Idaho. Miller v. State, 971 So.2d 951, 954 (Fla. App. 2007); People v. McGarghan, 18 Misc.3d 811, 852 N.Y.S.2d 615 (N.Y. Supp. 2007).

Yeoman has failed to carry his burden of showing the statute is unconstitutional. He has therefore necessarily failed to show error in the denial of his motion to dismiss.

CONCLUSION

The state respectfully requests that this Court affirm the district court's denial of Yeoman's motion to dismiss.

DATED this 17th day of July 2009.



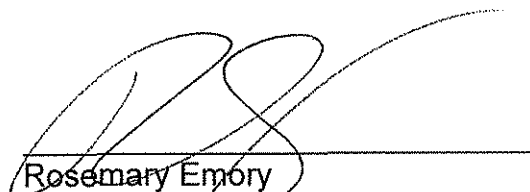
Rosemary Emory
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 17th day of July 2009, served a true and correct copy of the attached BRIEF OF RESPONDENT by causing a copy addressed to:

ERIC FREDERICKSON
DEPUTY STATE APPELLATE PUBLIC DEFENDER

to be placed in The State Appellate Public Defender's basket located in the Idaho Supreme Court Clerk's office.



Rosemary Emory
Deputy Attorney General

RE/pm

